No. 81-1859

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

ON PETITION FOR A WRIT OF CERTIORARI

TO THE

APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should review a point which the Appellate Court held was waived but discussed in dicta.

2. Whether during booking procedures the police may conduct a warrantless search of a purse in their custody as a delayed search incident to an arrest, despite the absence of any exigent circumstances.

3. Whether a warrantless inventory search of the purse during booking procedures is reasonable where the legitimate objectives of an inventory search could easily be achieved by sealing the purse and placing it in a secured locker.

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OPINION BELOW

The opinion of the Appellate Court of Illinois, Third Judicial District, is reported at 99 Ill. App. 3d 830, 425 N.E. 2d 1383 (3rd Dist. 1981).

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition For Writ of Certiorari. (Petition at 1-2) However, as treated more fully in the argument portion of this Brief In Opposition, which this Court requested be filed by June 24, 1982, respondent does not believe that the petitioner has shown any compelling reason for this Court to grant the Writ of Certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner has quoted those provisions of the United States Constitution applicable to this Case. (Petition at 2)

STATEMENT OF THE CASE

While the Petitioner's Statement of the Case is generally adequate for an understanding of the questions presented it omits important facts. Specifically, the Petitioner fails to make note that Officer Mietzner testified that defendant placed his purse on the counter pursuant to Mietzner's request (R17). Additionally, Mietzner indicated that he did not expect to find a gun or drugs when he searched the purse (R18-19).

REASONS FOR DENYING THE WRIT

I.

PETITIONER CONCEDES THAT THE APPELLATE COURT HELD THAT THE STATE WAIVED THE ARGUMENT THAT THE SEARCH WAS A VALID SEARCH INCIDENT TO ARREST, BUT ASKS THIS COURT TO REVIEW DICTA IN THE APPELLATE COURT'S DECISION. THIS REQUEST IS NOT COMPELLING SINCE THE REVIEW OF DICTA IS NOT A MATTER OF CONSTITUTIONAL URGENCY.

Petitioner concedes that the Appellate Court held that it waived the argument that the search was a valid search incident to arrest (Petition at 4). As noted by the court, the Petitioner failed to argue this point at the suppression hearing and, therefore pursuant to Illinois procedural rules, the argument was waived on appeal. People v. Lafayette, 99 Ill. App. 3d 830, 425 N.E. 2d 1383, 1385 (3rd Dist. 1981). Petitioner does not ask this Court to review the waiver holding, but instead requests that this Court address dicta in the court's opinion. Such a request lacks merit and provides no compelling ground for allowing the writ. See Henry v. Mississippi, 379 U.S. 443, 85 S. Ct. 564, 13 L. Ed. 2d 408 (1965).

II.

IN ANY EVENT, THE APPELLATE COURT'S DICTA TO THE EFFECT THAT THE SEARCH WAS NOT A VALID SEARCH INCIDENT TO AN ARREST IS CORRECT. THE SEARCH OF DEFENDANT'S PURSE WAS REMOTE IN TIME AND PLACE FROM THE ARREST AND NO EXIGENT CIRCUMSTANCES WERE PRESENT.

The Appellate Court in dicta indicated that the postponed warrantless search of defendant's purse was unreasonable because the purse was in the officer's exclusive possession and because no exigent circumstances existed. 425 N.E. 2d at 1385. The court also noted that the officer had no fear that the purse was a refuge for a weapon or other contraband. 425 N.E. 2d at 1385. This dicta is correct.

The purpose of the search-incident-to-arrest exception to the warrant requirement is that a contemporaneous search of the arrestee and the area within his immediate control will enable the police to protect themselves from concealed weapons and prevent the destruction of readily available evidence. Chimel v. California, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). This exception is narrow in scope, however. The search incident to arrest must be strictly tied to and justified by the circumstances which rendered its initiation permissible. Accordingly, the search incident to arrest must be conducted as a contemporaneous incident of that arrest. New York v. Belton, ___ U.S. ___, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981); United States v. Chadwick, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977).

In Chadwick, the Court rejected a similar argument that the search of luggage could be made as a delayed search incident to arrest:

> [W]arrantless searches of luggage or other properties seized at the time of an arrest cannot be justified as incident to that arrest either if the "search is remote in time or place from

> the arrest," Preston v. United States, 376 U.S. at 367, 11 L. Ed. 2d 777, 84 S. Ct. 881, or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest. 433 U.S. at 15, 53 L. Ed. 2d at 550, 551, 90 S. Ct. at 2485.

As noted by the Appellate Court in this case, once the purse was secured, no exigent circumstances remained. There was no danger that the respondent would obtain a weapon or destroy evidence. Moreover, the officer did not even suspect that the purse contained contraband or evidence of a crime. Accordingly, there was no ground to conduct a postponed warrantless search of the purse. The court's dicta is thus directly supported by this Court's decisions and those of other courts. See People v. Bayles, 82 Ill. 2d 128, 411 N.E. 2d 1346 (1980); People v. Helm, 89 Ill. 2d 34, 431 N.E. 2d 1033 (1981); United States v. Schleis, 582 F. 2d 1166 (8th Cir. 1978); Bradford v. State, 401 N.E. 2d 77 (Ind. App. 1980).

The Petitioner relies on this Court's decision in United States v. Edwards, 415 U.S. 800, 94 S. Ct. 1234, 39 L. Ed. 2d 771 (1974). That case involved the search of person arrested, not the search of his intimate belongings. When a search of luggage is involved, there must be exigent circumstances or a warrant. Chadwick; People v. Bayles.

The Petitioner's writ should be denied. In short, no compelling reasons exist for this Court to review dicta, which, in any event, is correct and well reasoned.

III.

IN ILLINOIS A PURSE MAY NOT BE SEARCHED AS PART OF AN INVENTORY WHERE IT CAN BE SEALED AND PLACED IN A SECURED LOCKER. THIS RULE IS CONSISTENT WITH THE DECISIONS OF THIS COURT. SECURING THE PURSE IS FAR LESS INTRUSIVE THAN SEARCHING IT AND ACHIEVES THE OBJECTIVES OF THE INVENTORY: THE PROPERTY IS PROTECTED AND THE POLICE ARE PROTECTED FROM FALSE CLAIMS OF LOST OR STOLEN PROPERTY. AN INVENTORY SEARCH UNDER CONDITIONS WHERE THE OBJECTIVES OF THE INVENTORY COULD BE ACHIEVED WITHOUT A SEARCH IS UNREASONABLE. THERE IS NO NEED FOR THIS COURT TO REVIEW THE HOLDING OF THE APPELLATE COURT WHICH WAS CORRECTLY DECIDED.

An inventory exception to the search warrant requirement has been applied to motor vehicles. South Dakota v. Opperman, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000 (1976). In that case this Court upheld the inventorying of the contents of an impounded vehicle. This Court noted that the expectation of privacy in the contents of an automobile was "significantly less" than that relating to one's home and that routine inventory served three legitimate objectives: (1) protection of the owner's property; (2) protection of police against false claims of lost or stolen property; and (3) protection of police from potential danger.

Illinois courts, including the Appellate Court in this case, have refused to apply the inventory exception to the search of luggage where the legitimate objectives of the inventory could have been achieved by sealing the container and placing it in a secured locker. People v. Helm, 89 Ill. 2d 34, 431 N.E. 2d 1033 (1981); People v. Bayles, 82 Ill. 2d 128, 411 N.E. 2d 1346 (1980); People v. Hamilton, 74 Ill. 2d 457, 386 N.E. 2d 53 (1979); People v. Redmond, 73 Ill. App. 3d 160, 390 N.E. 2d 1364 (1st Dist. 1979). The Illinois courts reason that there is a high privacy interest in the contents of luggage as opposed to that relating to one's car. See United States v.

Chadwick, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977). In considering the validity of an inventory search, the courts balance this high privacy interest in the luggage against the three legitimate objectives of an inventory noted in Opperman and enumerated above. If these objectives can be achieved without a search, then any search would be unreasonable.

In this case, the third objective, which is to protect the police from danger, is not presented by the facts.[1] The two other objectives, preservation of the property and protection of police from claims of lost or stolen property, could have been achieved by sealing the purse and securing it in a locker. Given the reasonableness standard of the Fourth Amendment, the less intrusive actions of sealing and securing the purse should have been taken as opposed to searching a container that carried high privacy interests.

The reasoning of the Illinois Courts, including the Appellate Court in this case, is thus sound. A correct result has been reached and there is no compelling need for this Court to address this matter.

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[1] Officer Mietzner testified that he had no fear for his safety at the time of the search.

CONCLUSION

For the foregoing reasons, respondent prays that the petition for Writ of Certiorari be denied.

Respectfully submitted,

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This Brief was prepared with the assistance of Pat Woodward, a law student at the University of Iowa School of Law, presently employed by the Office of the State Appellate Defender.

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-vs-

RALPH LAFAYETTE, Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, Ralph Lafayette, by and through his counsel, Robert Agostinelli, Deputy Defender, Office of the State Appellate Defender, Third Judicial District, requests leave to file the Attached Brief for Respondent in Opposition, without pre-payment of costs and to proceed in forma pauperis pursuant to Rule 46. The Respondent was previously granted leave to proceed in forma pauperis in this cause both in the Illinois Appellate and Supreme Courts.

The Respondent's affidavit in support of this Motion is attached hereto.

Robert Agostinelli
ROBERT AGOSTINELLI

SUBSCRIBED AND SWORN TO
Before me this 22nd day
of June, 1982.

Charlene McWilliams
NOTARY PUBLIC

No. 81-1859

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

I, Ralph Lafayette, being first duly sworn according to law, depose and say, in support of my Motion for Leave to Proceed without being required to prepay costs and fees:

1. I am the Respondent in the above-entitled cause.

2. Because of my poverty I am unable to pay the costs of said cause.

3. I am unable to give security for the same.

4. I believe that I am entitled to the redress I seek in said cause.

5. I was determined to be indigent by the Circuit Court of Kankakee County, Illinois and counsel was appointed to represent me on appeal to the Illinois Appellate and Supreme Courts.

FURTHER Affiant sayeth not.

RALPH LAFAYETTE

SUBSCRIBED AND SWORN TO
Before me this ____day
of_____, 1982.

NOTARY PUBLIC

NO. 81-1359

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SUPREME COURT OF THE UNITED STATES

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THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner

-vs-

RALPH LAFAYETTE, Respondent

CERTIFICATE OF SERVICE

I, Robert Agostinelli, a member of the bar of this Court and representing Respondent in this cause, certify:

1) That I have served one copy of the Motion for Leave to Proceed in Forma Pauperis, the Affidavit in support thereof, and Brief for Respondent in Opposition on Counsel for Petitioner, by depositing same in a United States Post Office mail box at 628 Columbus Street, Ottawa, Illinois 61350, with first class postage prepaid, and with the envelope addressed as follows:

Honorable Tyrone Fahner
Attorney General
188 West Randolph-Suite 2200
Chicago, Illinois 60601

2) The above named party is the only party required to be served.

Robert Agostinelli
ROBERT AGOSTINELLI

DATED: 6/22/82

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